

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**HOWARD TOGO WOOD, JR.
ADC #155339**

PLAINTIFF

v.

No. 5:19-cv-228-DPM

**THOMAS BURNS, General Counsel,
Arkansas Department of Correction, and
WENDY KELLEY, Director, ADC**

DEFENDANTS

ORDER

On *de novo* review, the Court adopts Magistrate Judge Volpe's recommendations as modified, *No. 7 & 11*, and overrules Wood's objections and clarifications, *No. 8 & 9*. FED. R. CIV. P. 72(b)(3). The modification: Wood hasn't shown actual injury because his underlying claim doesn't involve a challenge to his conviction or an alleged civil rights violation. *Lewis v. Casey*, 518 U.S. 343, 354-55 (1996); *White v. Kautzky*, 494 F.3d 677, 680-81 (8th Cir. 2007). His complaint will therefore be dismissed without prejudice for failure to state a claim. This dismissal counts as a "strike" for the purposes of 28 U.S.C. § 1915(g). An *in forma pauperis* appeal from this Order and accompanying Judgment would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

25 September 2019